MAR 26 1955
HAROLD B. WILLEY, Clerk

Supreme Court of the United States

OCTOBER TERM, 1954

No. 675

JACK HANRATTY, PETITIONER

versus

UNITED STATES OF AMERICA, RESPONDENT

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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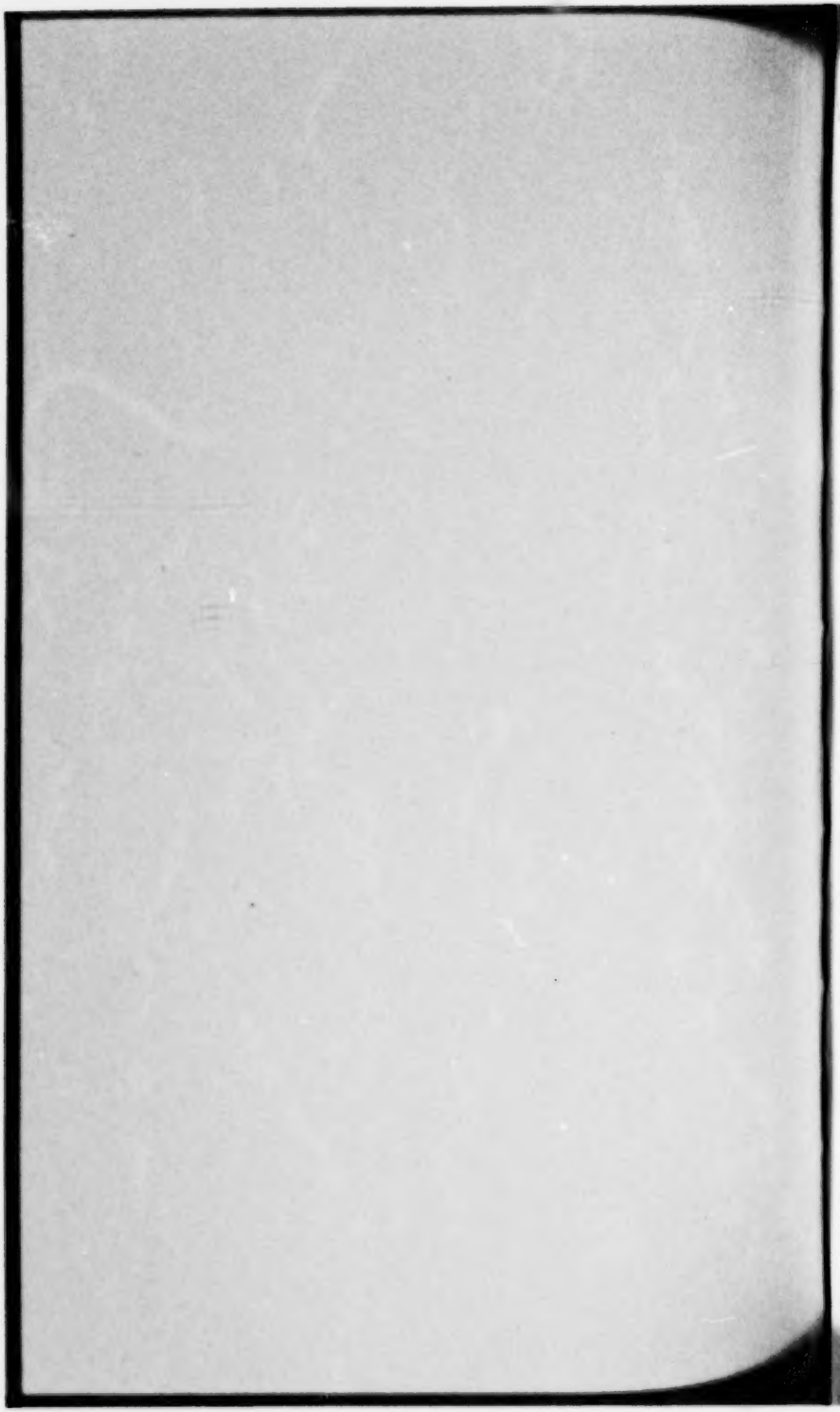

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JACK HANRATTY, PETITIONER

versus

UNITED STATES OF AMERICA, RESPONDENT

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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TO THE SUPREME COURT OF THE UNITED STATES:

Jack Hanratty, Petitioner here, prays that a writ of certiorari issue to review the judgment entered in this case on the 25th day of January, 1955, by the United States Court of Appeals for the Fifth Circuit.

Opinion

The opinion of the Court of Appeals is reported in 218 Federal Reporter, 2d Series, 358, and a copy of the opinion may be found in Transcript of Record at Page 311. A copy of such opinion is attached. (Appendix p. 7).

Jurisdiction

The judgment below was entered on the 25th day of January, 1955, and petition for rehearing was denied on the 24th day of February, 1955. The jurisdiction of this Court is invoked under Sec. 1254 (1) of Title 28 of the U. S. Code, entitled "Judicial Code and Judiciary," Act approved June 28, 1948, effective September 1, 1948. This action involves conviction for violations of Secs. 371 and 2314 of Title 18 of U.S.C.

Questions Presented

The questions presented by the opinion and record are these:

I.

Whether the grand jury which indicted, and the petit jury which tried and convicted Petitioner, Jack Hanratty, selected, impaneled and sworn pursuant to a plan, system and procedure fixed under the provisions of Article 2133, **Vernon's Annotated Statutes of the State of Texas,** enacted pursuant to the provisions of Article 16, Section 19, of the **Constitution of the State of Texas,** which expressly limits grand jury and petit jury service to men only, and expressly and impliedly excludes and prohibits women from serving on grand and petit juries, constituted a denial to Petitioner, Jack Hanratty, of a fair and impartial jury trial as guaranteed to him by the 6th Amendment to the Constitution of the United States.

II.

Whether there is any substantial evidence that the Petitioner, Jack Hanratty, entered into an agreement to cause

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to be transported in interstate commerce falsely made and forged securities.

III.

Whether there is any substantial evidence to connect Petitioner with an agreement to cause to be transported in interstate commerce falsely made and forged securities, as alleged in the conspiracy count in the indictment.

IV.

Whether there is substantial evidence to connect Petitioner, Jack Hanratty, with the act of causing to be transported in interstate commerce from San Antonio, Texas, to Tulsa, Oklahoma, a falsely made and forged security, to-wit, a $400.00 cashier's check, as alleged in the substantive count in the indictment;

The facts with reference to Paragraphs II, III and IV above were these: Petitioner, Jack Hanratty, Ellen Elizabeth Pool, appellant in the Court below, and Albert Granato, who did not appeal his conviction, were convicted of (1) conspiring to transport forged securities in interstate commerce, and (2) causing to be transported a falsely made and forged security, namely, a $400.00 cashier's check.

The defendants, Albert Granato and Ellen Elizabeth Pool, both testified positively that they did not have any kind or character of agreement or understanding with Petitioner, Jack Hanratty, or with each other, about the cashier's checks, or causing any of them to be placed in interstate commerce. The Government did prove that the package of blank checks, printed in the name of First National Bank, Tulsa, Oklahoma, identified as Government's Exhibit No. 10, was in the possession of Petitioner, Jack Hanratty; that he gave them to Lucille Scoggin and

asked her to fill out about $3,000.00 worth of them so he could use them as a flash during the baseball season; that she did partially fill out some of the checks, including the bogus check, identified as Government's Exhibit No. 1, and gave them to petitioner Hanratty; that, along about that time, petitioner Hanratty sent for a check protector, but there is no evidence whatever that the check protector was used in making up Government's Exhibit No. 1; that petitioner Hanratty had conversations at the Town Lounge with defendant Albert Granato, but there is absolutely no evidence of what was said during these conversations, except the undisputed testimony of defendant Albert Granato, who swore he was talking to petitioner Hanratty about renting the kitchen at the Town Lounge, which was vacant at the time; that petitioner Hanratty sent defendant Albert Granato to Joe's Barber Shop with Government's Exhibit No. 1 to put up as a wager in connection with the Walcott-Marciano prize-fight, with instruction not to cash the check, and the Government's proof shows the wager was not made because a suggestion that the check be cashed was refused. Boiled down, this was all the evidence on which the jury could base an unlawful agreement. True, there was undisputed proof of the cashing of the check some time later by the defendant Ellen Elizabeth Pool, but participation in the substantive offense charged, or participation in one or more of the overt acts alleged, are not in themselves sufficient to support an agreement to cause falsely made and forged securities to be transported in interstate commerce. There was no evidence and no substantial evidence to in any way connect Petitioner with the actual cashing of the bogus check by Ellen Elizabeth Pool.

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V.

Statutes Involved

Constitution of the State of Texas, Art. 16, Sec. 19; **Vernon's Annotated Civil Statutes of Texas,** Art. 2133.

VI.

Reasons for Granting the Writ

This Court, in the case of **Ballard v. United States,** 329 U.S. 186, 91 L.Ed. 181, held that the systematic exclusion of women from the jury in California violated the 5th and 6th Amendments to the Constitution of the United States. It is true that in California women were qualified to serve on juries, which was not true in Texas prior to the November, 1954, election, when a constitutional amendment was passed in Texas allowing women to serve on juries. However, as we view the broad language of this Court in the **Ballard** case, supra, it would appear that the same violence to the 5th and 6th Amendments to the Constitution of the United States was committed by the constitutional and statutory provisions of Texas as was done by the conduct of the officials in the **Ballard** case, supra. It thus appears that the opinion of the lower Court is in conflict with this Court's decision in the **Ballard** case, supra.

There are a great many States in the Union that still do not permit women to serve on juries and we feel that it is important to the jurisprudence of the Nation to define the scope of the **Ballard** case, supra, as to whether it applies to those States which exclude women from jury service.

It is uniformly held that the gist of the offense of conspiracy is the agreement among the conspirators to commit an offense attended by an act of one or more of the conspirators to effect the object of the conspiracy. This being a

circumstantial evidence case, a verdict of guilty must not only be consistent with the guilt of the defendant but must be inconsistent with any other reasonable hypothesis of innocence, and that links in the chain of guilt, forged by purely circumstantial evidence, must be clearly proven and taken together, point to a moral certainty, not merely possibility or probability of guilt to justify conviction. Hence, we feel that the opinion of the lower Court is in conflict with the following decisions:

Pines vs. United States, 123 Fed. 2d, 825 (8th Circ.);
Kassin vs. United States, 87 Fed. 2d, 184 (5th Circ.);
Rent vs. United States, 209 Fed. 2d, 893 (5th Circ.):
McTyre vs. United States, 213 Fed. 2d, 65 (5th Circ.):
Lee vs. United States, 106 Fed. 2d. 906 (9th Circ.)

WHEREFORE, Petitioner, Jack Hanratty, prays that his petition for a writ of certiorari from this Court to the Court of Appeals for the Fifth Circuit be granted.

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APPENDIX

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT.

No. 15106

JACK HANRATTY and ELLEN ELIZABETH POOL,
APPELLANTS,

versus

UNITED STATES OF AMERICA,
APPELLEE.

Appeals from the United States District Court for the Western District of Texas.

(January 25, 1955.)

Before BORAH and TUTTLE, Circuit Judges, and DAWKINS, District Judge.

TUTTLE, Circuit Judge: Appellants were convicted of (1) conspiring to transport forged securities in interstate commerce, and (2) causing to be so transported a

falsely made and forged security, namely a $400 cashier's check. The grounds of this appeal are that appellants maintain that there was no substantial evidence to support the verdict, and a verdict of acquittal should have been directed; and that appellants were deprived of a fair trial because women were excluded from the jury.

The evidence against the appellants was briefly as follows: Hanratty, owner of a San Antonio bar, had in his possession a package of checks printed by a San Antonio printer, one of which was later filled in and transported in interstate commerce in bank clearance. The checks purported to be cashier's checks in blank on the First National Bank of Tulsa, Oklahoma, a fictitious bank. The Federal Reserve identification number printed on the checks was that of the Alamo National Bank of San Antonio, where appellant Pool was employed. Hanratty asked witness Scoggin, also an employee of the Alamo Bank, to make up and fill out the checks, saying he wanted to "flash" them in connection with his gambling activities. Scoggin partly filled out the checks with typewriter making up fictitious names of payees, and signed a signature purporting to be that of a bank officer on them. Hanratty sent another witness out to obtain a check writing machine or protector, capable of putting the perforated, printed amounts on the checks which later appeared on one of them. The same witness testified that Hanratty took the check protector to the kitchen of his bar and locked it up and that Granato, a co-defendant who did not appeal his conviction, was seen to spend long hours in Hanratty's kitchen after the check protector was obtained. About the same time Hanratty sent out a witness to purchase a genuine $5.00 cashier's check from the Alamo Bank. Hanratty also asked two witnesses for blank

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cashier's checks of the Alamo Bank, where they were employed, and they refused to give them to him. All three defendants in the prosecution below frequently associated together at Hanratty's bar. Granato asked one witness how to identify a bad cashier's check, stating that he was in possession of several cashier's checks. Appellant Pool actually had the $400 check cashed at the Alamo Bank. A witness testified that she warned Pool that she thought the check was "not any good" a few minutes before Pool cashed it. At the time of cashing it, Pool told the teller she had known the payee three months, but at trial she said she had met him a few days before in a drug store. This payee was said by an earlier witness to be a fictitious person whose name she invented. The check actually cashed was one of the packages of printed checks in Hanratty's possession.

We think the convictions should be affirmed. There was abundant circumstantial evidence of a conspiracy and actual commission of the substantive crime by the appellants. The jury was given a charge as to circumstantial evidence more favorable to defendants than the charge to which they were entitled. **Holland v. United States,** 23 L.W. 4024, 4029 (U.S. Sup. Ct., Dec. 6, 1954). As to the contention that the convictions should be reversed because women were excluded from the jury, this argument seems utterly without substance, both because not timely objected to, and because such exclusion did not deprive appellants of any procedural right either under statute or the Constitution. **Frazier v. United States,** 335 U.S. 497, 69 S. Ct. 201, 93 L. Ed. 187; **Johnson v. Sanford,** 5th Cir., 167 F. 2d 738; **Quinones v. United States,** 1st Cir., 161 F. 2d 79, cert. den. 331 U.S. 833, 67 S. Ct. 1513, 91 L. Ed. 1846; 28 U.S.C. §§ 411, 412; Vernon's

Texas Statutes, Art. 2133; **Glover v. Cobb**, Tex. Civ. App., 123 S.W. 2d 794.

The judgments are

AFFIRMED.

A True Copy:
Teste:

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Clerk of the United States Court of Appeals for the Fifth Circuit.

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1. **Constitution of the State of Texas**, Art. 16, Sec. 19.

   "The legislature shall prescribe by law the qualification of grand and petit jurors."

2. **Vernon's Annotated Civil Statutes of Texas**, Art. 2133—Qualifications

   "All men over twenty-one years of age are competent jurors, unless disqualified under some provision of this chapter. No man shall be qualified to serve as a juror who does not possess the following qualifications: ***"

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